F. M. S. REPORTS.

[ORIGINAL CIVIL JURISDICTION]

CUSSEN, J.

June 3, 1940.

LEE WHAT KAY v. OFFICIAL ASSIGNEE, SINGAPORE, as receiver of the estate of Kang Boon Tuan, a bankrupt.

[SELANGOR CIVIL SUIT No. 162 of 1939]

Practice — parties — joinder — partnership action —bankruptcy of partner—whether Official Assignee of his estate may be joined as defendant.

Although under the laws of the Federated Malay States the share of a bankrupt in a partnership vests after adjudication in the Official Assignee of his estate, it is nevertheless improper in a suit for dissolution of partnership to join the Official Assignee as a defendant. The proper defendant in such a case is the bankrupt himself.

Cases referred to:—

(1) *Holdernesse v. Shackles,* 8 B. & C. 612.

(2) *Public Trustee v. Elder,* (1926) Ch. D. 266.

TRIAL OF SUIT.

S. M. Yong for plaintiff.

Hastings for defendant.

Cussen, J.—The Plaintiff, in partnership with one Kang Boon Tuan, carried on a business in Kuala Lumpur known as "Chop Guan Soon."

Kang Boon Tuan has been adjudicated a Bankrupt in the Colony at Singapore on 10th February, 1939.

The Plaintiff has now brought this Suit asking for dissolution of the partnership Chop Guan Soon and the taking of the accounts etc.

He has joined as Defendant the "Official Assignee of the property of Kang Boon Tuan, a bankrupt under the law of the Straits Settlements".

This Defendant now contends that he is wrongly joined as Defendant, and that the proper Defendant in a Suit of this nature is the Bankrupt himself.

That is the only question I have here to decide.

Counsel for Plaintiff relies on Section 97 of the Bankruptcy Enactment (Cap. 55).

That section provides that when a person has been adjudicated a Bankrupt in the Colony such property of such bankrupt situate in the Federated Malay States as would if he had been adjudged Bankrupt in the Federated Malay States vest in the Official Assignee of the Federated Malay States shall vest in the Official Assignee of the Colony; and that every such Official Assignee may sue and be sued in any Court in the Federated Malay States by the official name of "The Official Assignee of the property of.....a bankrupt under the law of the Straits Settlements".

Now the Law of the Federated Malay States as to the effect on a partnership of the bankruptcy of one of the partners is different from the English Law.

In English Law the effect of such a bankruptcy is *ipso facto* to effect the dissolution of the partnership. The Assignee does not become a co-partner with the solvent partners but becomes "tenant in common with the other partners subject however to an account; for as Lord Tenterden said in *Holdernesse v. Shackles*[1], it is clearly established as a good principle of law that if one partner becomes a bankrupt his assignees can obtain no share of the partnership effects until they first satisfy all that is due from him to the partnership. The trustee does not become a co-partner with the solvent partners".

(*Williams* on Bankruptcy 15 Edition pages 203—4).

The law of partnership in the Federated Malay States is contained in Sections 239—266 of the Contract Enactment Chapter 52, and Section 254 reads as follows:—

"254. At the suit of a partner the Court may dissolve the partnership in the following cases:—

(a) .....

(b) When a partner, other than the partner suing has been adjudicated bankrupt under any law relating to bankruptcy;

(c) When a partner other than the partner suing has done any act by which the whole interest of such partner is legally transferred to a third person".

Thus in our law bankruptcy does not itself effect dissolution but is a ground on which the Court *may* order dissolution. The partnership continues to exist until an Order of dissolution is made.

But after adjudication the partner continues to be the Bankrupt himself personally—the Official Assignee does not become the partner although the adjudication vests in the Official Assignee the share of the Bankrupt in the partnership.

The basic reason for this is of course that the relationship of partnership is a personal one founded

on mutual confidence which is the reason why the law provides in Section 253 (6) that "no person can introduced a new partner into a firm without the consent of all the partners" (in the absence of any contract to the contrary).

A partner cannot by assigning his share make anyone else a partner in his stead with his co-partners; and I do not see that the law places the Official Assignee in Bankruptcy in any better or other position than any other Assignee of a partner's share.

If the partnership is not dissolved (and it requires an order of Court to do so which is apparently discretional—*vide* the word "may") the Assignee is not even entitled to an account but only to receive whatever the Bankrupt would have received in the way of distribution of profits and such like.

If there is a dissolution he has a right to sue, not as a partner, but, as an assignee of the rights of the Bankrupt in the partnership property, for an account of that property and for such a distributive share as belonged to his assignor. (*Pollock* and *Mulla*—Indian Contract Act 6th Edition p. 708).

Owing to the fact that in English law bankruptcy *ipso facto* effects dissolution the question of the position of the Official Assignee could not arise there in the form in which it has arisen in this present Suit, but that the true position of the Official Assignee in this present matter is that he is not the proper Defendant to this Suit but that the Bankrupt partner himself is, I think, clearly revealed in the English case of *Public Trustee v. Elder,*[2].

There, the Public Trustee, as Custodian of Enemy Property, had vested in him by an Order of the Board of Trade all the property, rights and interests of three German partners in the assets of a Firm 'A' with one English Partner.

The Public Trustee brought an action to wind up the partnership. The German partners were not added as plaintiffs in the action. It was held that in the absence of the German partners as parties to the action, no such relief or accounts as claimed could be ordered and the action failed. At page 272 the Judgment proceeds:—

> "I cannot accede to the contention put forward on his behalf that his position is distinguishable from that of any other assignee".

In that case the position of the Public Trustee as an Assignee by an Order under the Statute and not by the act of the partners themselves by assignment is, I think, analogous to that of the Official Assignee in Bankruptcy.

I have come therefore to the conclusion that the contention of the Defendant is right and that the proper Defendant to this Suit is the Bankrupt in person. The Official Assignee is therefore dismissed from the Suit as Defendant with costs; and I order that that Kang Boon Tuan be substituted as Defendant in this Suit.

The costs which the Plaintiff is to pay the Official Assignee he is entitled to recover from the assets of the partnership. There will be an order accordingly.

Order accordingly.

[APPELLATE CRIMINAL JURISDICTION]

CUSSEN, J.

July 4, 1940.

HOO KUNG HOCK v. PUBLIC PROSECUTOR.

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 36 of 1940]

Common Gaming Houses—raid of a club—seizure of gaming implements and money found on persons arrested—conviction—order for confiscation of money —validity.

Seventeen persons were arrested when the Police raided a Chinese club in Kuala Lumpur. On arrest, these persons were searched and from their persons were taken various sums totalling $198.08. They were convicted under the Common Gaming Houses Enactment on a plea of guilty, and fined $5.00 each. The trial Magistrate made an order of confiscation of the moneys so found on the persons of the accused.

Held, that the Magistrate was not justified in making the order of confiscation, there being no evidence that the money seized by the Police was used for the commission of the offence of gaming.

CRIMINAL REVISION.

Cussen, J.—On the 11th February, 1940, about 3 p.m. the Police raided a Chinese Club at No. 1, Cross Lane, Kuala Lumpur, and found there, in the Club room, a number of Chinese playing dominoes for money. A number of gaming implements such as dominoes and dice, mahjong sets, were seized and also a certain quantity of money on the table and in a cash-box and locked drawer.

Seventeen persons were arrested. On arrest, these persons were searched and from their persons was taken various sums totalling $198.08.

They were all charged under the Common Gaming Houses Enactment and pleaded guilty and were fined